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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed
as a separate compilation

LOK SABHA

The following Bill was introduced in Lok Sabha on 10th March, 1993:—

BILL No. 16 OF 1993

A Bill further to amend the Foreign Exchange Regulation Act, 1973.

Be it enacted by Parliament in the Forty-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Foreign Exchange Regulation (Amendment) Act, 1993.

Short
title
and
com-
mence-
ment.

(2). It shall be deemed to have come into force on the 8th day of January, 1993.

Amend-
ment of
long title.

46 of 1973.

2. In the Foreign Exchange Regulation Act 1973 (hereinafter referred to as the principal Act), in the long title, the words "and bullion" shall be omitted.

Amend-
ment of
section 2.

3. In section 2 of the principal Act, clauses (j) and (v) shall be omitted.

Omis-
sion of
sections
11 and
12.

4. Sections 11 and 12 of the principal Act shall be omitted.

5. In section 13 of the principal Act,—

(a) in sub-section (1), the words "any gold or silver or" shall be omitted;

Amend-
ment of
section 13.

(b) in sub-section (2), the words "gold, jewellery or precious stones or" shall be omitted.

Omission of sections 15 and 17.

6. Sections 15 and 17 of the principal Act shall be omitted.

Insertion of new section 18A.

7. After section 18 of the principal Act, the following section shall be inserted, namely:—

Payment for lease, hire, or other arrangement.

"18A. No person shall, except with the general or special permission of the Reserve Bank, take or send out by land, sea or air any goods from India to any place on lease or hire or under any arrangement other than sale or disposal in any other manner of such goods."

Amendment of section 19.

8. In section 19 of the principal Act,—

(a) in sub-section (1), clause (c) shall be omitted;

(b) in sub-section (4), clause (c) shall be omitted;

(c) for sub-sections (5) and (6), the following sub-sections shall be substituted, namely:—

"(5) Notwithstanding anything contained in any other law, no transfer of any share, bond or debenture of a company registered in India made by a person resident outside India or by a national of a foreign state to another person resident in India shall be valid unless such transfer is confirmed by the Reserve Bank on an application made to it in this behalf by the transferor or the transferee.

(6) If the Reserve Bank is of opinion that it is necessary or expedient in the public interest so to do, it may, by general or special permission, exempt any transfer referred to in sub-section (5) or any class of such transfers from the operation of the provisions of that sub-section, subject to such conditions, if any, as may be specified in such permission."

Omission of sections 20 and 21.

9. Sections 20 and 21 of the principal Act shall be omitted.

Amendment of section 22.

10. In section 22 of the principal Act, the words "The Central Government may, by notification in the Official Gazette, order that" shall be omitted.

Omission of section 23.

11. Section 23 of the principal Act shall be omitted.

Amendment of section 25.

12. In section 25 of the principal Act,—

(a) in sub-section (1), for the words "permission of the Reserve Bank", the words "general or special permission of the Reserve Bank" shall be substituted;

(b) sub-section (3) shall be omitted.

13. For section 26 of the principal Act, the following section shall be substituted, namely:—

“26. Except with the general or special permission of the Central Government or the Reserve Bank, no person resident in India shall give a guarantee in respect of any debt or other obligation or liability—

(i) of a person resident in India, and due or owing to a person resident outside India, or

(ii) of a person resident outside India.”

14. Section 27 of the principal Act shall be omitted.

15. In section 28 of the principal Act,—

(a) for sub-sections (1), (2) and (3) the following sub-sections shall be substituted, namely:—

“(1) Without prejudice to the provisions of section 47 and notwithstanding anything contained in any other provision of this Act or the Companies Act, 1956, a person resident outside India (whether a citizen of India or not) or a person who is not a citizen of India but is resident in India, or a company (other than a banking company) which is not incorporated under any law in force in India or any branch of such company, shall not except with the general or special permission of the Reserve Bank, act, or accept appointment, as agent in India of any person or company, in the trading or commercial transactions of such person or company.

(2) Where any such person or company (including its branch) as is referred to in sub-section (1) acts or accepts appointment as such agent without the permission of the Reserve Bank, such acting or appointment shall be void.

(3) Where any such person or company (including its branch) as is referred to in sub-section (1) acts as, or holds the appointment of, any such agent as is referred to in that sub-section at the commencement of this Act, such person or company (including its branch) shall, within a period of six months from such commencement or such further period as the Reserve Bank may allow in this behalf, make an application to the Reserve Bank in such form and containing such particulars as may be specified by the Reserve Bank for permission to continue to act as such agent.”;

(b) in sub-section (6), the words “or appointment or, as the case may be, from permitting the use of any such trade mark” shall be omitted;

Substitution of new section for section 26.

Certain provisions as to guarantee in respect of debt or other obligation.

Omission of section 27.

Amendment of section 28.

(c) in sub-section (7), the words “, appointment or permission, as the case may be,” shall be omitted;

(d) in the *Explanation*, clause (d) shall be omitted.

Amend-
ment of
section
29.

16. In section 29 of the principal Act,—

(a) in sub-section (1), the words “or in which the non-resident interest is more than forty per cent.” shall be omitted;

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) A company (other than a banking company) in which the non-resident interest is more than forty per cent., shall not, except with the general or special permission of the Reserve Bank, carry on in India any activity relating to agriculture or plantation or acquire the whole or any part of any undertaking in India of any person or company carrying on any activity relating to agriculture or plantation or purchase the shares in such company.”;

(c) after sub-section (4), for the *Explanation*, the following *Explanation* shall be substituted, namely:—

‘*Explanation*.—For the purposes of this section,—

(i) “company” has the same meaning as in clause (b) of the *Explanation* to section 28;

(ii) “non-resident interest” means participation in the share capital by, or entitlement to the distributable profits of, any individual or company resident outside India, or any company not incorporated under any law in force in India, or any branch of such company whether resident outside India or not.’

Amend-
ment of
section
30.

17. In section 30 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) No national of a foreign State shall, without the previous permission of the Reserve Bank, practise any profession or carry on any occupation, trade or business in India in a case where such national desires to acquire any foreign exchange (such foreign exchange being intended for remittance outside India) out of any moneys received by him in India by reason of the practising of such profession or the carrying on of such occupation, trade or business, as the case may be.”.

Amend-
ment of
section
31.

18. In section 31 of the principal Act, in sub-section (1), the words “or in which the non-resident interest is more than forty per cent.” shall be omitted.

Omis-
sion of
section
32.

19. Section 32 of the principal Act shall be omitted.

5 of 1898.
2 of 1974.

20. In sections 35, 37, 46 and 62 of the principal Act, for the words and figures "Code of Criminal Procedure, 1898", the words and figures "Code of Criminal Procedure, 1973" shall be substituted.

Amend-
ment of
sections
35, 37, 46
and 62.

21. In section 41 of the principal Act,—

(a) for the words "one year", wherever they occur before the *Explanation*, the words "six months" shall be substituted;

Amend-
ment of
section
41.

(b) in clause (ii), the following proviso shall be inserted at the end, namely:—

"Provided that the aforesaid period of six months may, for reasons to be recorded in writing, be extended by the Director of Enforcement for a further period not exceeding six months";

(c) in the *Explanation*, the words "of one year" shall be omitted.

22. In section 42 of the principal Act,—

Amend-
ment of
section 42.

(a) in sub-section (1), in clause (i), after the word and figures "section 18", the words, figures and letter "or section 18A" shall be inserted;

(b) after sub-section (3), the following sub-sections shall be inserted, namely:—

"(4) Where any foreign currency, being the subject-matter of any investigation or proceeding referred to in sub-section (1), is in the custody of an officer of Customs or of an officer of Enforcement or of a court, the Collector of Customs, the Director of Enforcement or, as the case may be, the court may, having regard to the security-risk involved in such custody, direct that the foreign currency be deposited in a bank in such manner as he or it may deem fit.

(5) Where any draft, cheque (including traveller's cheque) or other instrument is to be encashed under sub-section (1) or any foreign currency is to be deposited in a bank under sub-section (4), the Collector of Customs, the Director of Enforcement or, as the case may be, the court, may prepare or cause to be prepared an inventory of such draft, cheque or other instrument or foreign currency containing such details relating to its description, mark, numbers, country of origin and other particulars as may appear to be relevant to its identity in any proceeding under this Act and where the inventory is prepared or cause to be prepared by the Collector or the Director, the Collector or, as the case may be, the Director shall make an application to a Magistrate for the purpose of—

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of the Magistrate photographs of such draft, cheque, other instrument or foreign currency, and certifying such photographs as true.

(6) Where an application is made under sub-section (5), the Magistrate shall, as soon as may be, allow the application."

Amend-
ment of
section
43.

23. In section 43 of the principal Act, in sub-section (5), the words and figures "and to a person to whom a licence has been granted or deemed to have been granted under section 32" shall be omitted.

Amend-
ment of
section
45.

24. In section 45 of the principal Act,—

(a) in sub-section (1), for the words and figures "Code of Criminal Procedure, 1898, any police officer not below the rank of a Sub-Inspector of Police", the words and figures "Code of Criminal Procedure, 1973, any police officer not below the rank of a Deputy Superintendent of Police" shall be substituted;

5 of 1898.

2 of 1974.

(b) in sub-section (3), for the words and figures "Code of Criminal Procedure, 1898", the words and figures "Code of Criminal Procedure, 1973" shall be substituted.

5 of 1898.

2 of 1974.

Amend-
ment of
section
50.

25. In section 50 of the principal Act, for the word and figures "section 18", the words, figures and letter "section 18, section 18A" shall be substituted.

Amend-
ment of
section
52.

26. In section 52 of the principal Act,—

(a) in sub-section (2), after the words "Any person aggrieved by such order may," the words "on payment of such fee as may be prescribed and" shall be inserted;

(b) in sub-section (6), in the second proviso, for the words fifty thousand rupees", the words "two lakhs and fifty thousand rupees" shall be substituted.

Amend-
ment of
section
53.

27. In section 53 of the principal Act, in sub-section (2), for the words and figures "sections 480 and 482 of the Code of Criminal Procedure, 1898", the words and figures "sections 345 and 346 of the Code of Criminal Procedure, 1973" shall be substituted.

5 of 1898.

2 of 1974.

Amend-
ment of
section
56.

28. In section 56 of the principal Act,—

(a) in sub-section (1), for the word and figures "section 18", the words figures and letter "section 18, section 18A," shall be substituted;

(b) in sub-section (2) and (3), for the word and figures "section 18", wherever they occur, the words, figures and letter "section 18 or section 18A" shall be substituted;

(c) in sub-section (6), for the words and figures "the first proviso to section 188 of the Code of Criminal Procedure, 1898", the words and figures "the proviso to section 188 of the Code of Criminal Procedure, 1973" shall be substituted.

5 of 1898.

2 of 1974.

Amend-
ment of
section
58.

29. In section 58 of the principal Act,—

(a) in sub-section (1), for the words "be punishable with fine which may extend to two thousand rupees", the words "be punishable with imprisonment for a term which may extend to two years or with fine which may extend to ten thousand rupees or with both" shall be substituted;

(b) in sub-section (2), for the words "two thousand rupees", the words "ten thousand rupees" shall be substituted.

30. In section 61 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

Amend-
ment of
section
61.

2 of 1974.

“(1) Notwithstanding anything contained in section 29 of the Code of Criminal Procedure, 1973, it shall be lawful for any metropolitan magistrate and for any magistrate of the first class to pass a sentence of imprisonment for a term exceeding three years or of fine exceeding five thousand rupees on any person convicted of an offence punishable under section 56.”.

31. In section 64 of the principal Act, in sub-section (1) and (2), for the word and figures “section 18”, the words, figures and letter “section 18, section 18A,” shall be substituted.

Amend-
ment of
section
64.

5 of 1898.

2 of 1974.

32. In section 66 of the principal Act, in sub-section (1), for the words and figures “section 562 of the Code of Criminal Procedure, 1898”, the words and figures “section 360 of the Code of Criminal Procedure, 1973” shall be substituted.

Amend-
ment of
section
66.

33. In section 67 of the principal Act, for the word and figures “section 18”, the words, figures and letter “section 18, section 18A” shall be substituted.

Amend-
ment of
section
67.

34. In section 71 of the principal Act, in sub-section (3), for the words “two hundred and fifty rupees” the words “fifteen thousand rupees” shall be substituted.

Amend-
ment of
section
71.

35. In section 73 of the principal Act, in sub-section (3), the words, brackets and figures “persons referred to in sub-section (1) of section 32” shall be omitted.

Amend-
ment of
section
73.

36. After section 73 of the principal Act, the following section shall be inserted, namely:—

Insertion
of new
section
73A.

“73A. Without prejudice to the provisions of sections 50 and 51 where any authorised dealer contravenes any direction given by the Reserve Bank under this act or fails to file any return as directed by the Reserve Bank, the Reserve Bank may, after giving a reasonable opportunity of being heard impose on the authorised dealer a penalty which may extend to ten thousand rupees and in the case of continuing contravention with an additional penalty which may extend to two thousand rupees for every day during which such contravention continues.”.

Penalty
for
contra-
vention
of direc-
tion of
Reserve
Bank
or for
failure
to file
returns.

37. In section 74 of the principal Act, in clause (i), for the figures and word “9, 10 or 11”, the figures and word “9 or 10” shall be substituted.

Amend-
ment of
section
74.

38. In section 79 of the principal Act, in sub-section (2), after clause (d), the following clause shall be inserted, namely:—

Amend-
ment of
section
79.

“(dd) prescribe the fee payable by a person preferring appeal to the Appellate Board under sub-section (2) of section 52;”.

Repeal
and
savings.

39. (1) The Foreign Exchange Regulation (Amendment) Ordinance, 1993 is hereby repealed.

Ord. 9
of 1993.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance so repealed, shall be deemed to have been done or taken under the corresponding provisions of this Act.

STATEMENT OF OBJECTS AND REASONS

In view of the major changes introduced in the Indian economy and the liberalisation of industrial and trade policies, consistent with the fast-changing international economic and trade relations, it has become necessary to create a better and more conducive climate for increased inflow of foreign investment and capital in the country to accelerate industrial growth and promotion of trade, especially exports.

2. When the Foreign Exchange Regulation Act, 1973 was enacted certain special restrictions were introduced in regard to foreign investments and activities of individuals and concerns in India having non-resident interest. While it is necessary to continue to regulate the activities of foreign companies or branches of such companies and foreign citizens in India, the special restrictions need to be removed in respect of companies registered in India, and the regulations in regard to foreign investment need to be simplified to attract better flow of foreign capital and investment. Accordingly, it has become necessary to remove unnecessary restrictions and also simplify the procedure.

3. Experience gained over the years in the administration of the aforesaid Act has shown certain provisions, meant to deal with emergencies of different kinds, are no longer relevant and require to be removed for improving the climate for investment in India. It is also proposed, *inter alia*, to prescribe a fee for appeals before the Appellate Board under the Act and also to enlarge the pecuniary jurisdiction of a member of that Board. The punishment prescribed in section 58 is also proposed to be increased. It is necessary to empower the Reserve Bank to impose penalties on the authorised dealers for effective monitoring and ensuring compliance of its directions.

4. The Foreign Exchange Regulation (Amendment) Bill, 1992 to achieve the aforesaid objects was circulated in Lok Sabha in the Winter Session of Parliament but could not be introduced. As it was necessary to take immediate action and as Parliament was not in session, the President promulgated the Foreign Exchange Regulation (Amendment) Ordinance, 1993 (Ord. 9 of 1993) on the 8th January, 1993.

5. The Bill seeks to replace the aforesaid Ordinance and also seeks to achieve the aforesaid objectives.

NEW DELHI;

ABRAR AHMED.

The 22nd February, 1993.

Notes on clauses

Clause 2 seeks to omit "bullion" from the long title of the Foreign Exchange Regulation Act, 1973 because bullion will no longer be regulated as such for import or export except as goods.

Clause 3 seeks to omit the definitions of 'gold' and 'silver' from section 2 as a result of omission of 'bullion' from the long title.

Clause 4 seeks to omit sections 11 and 12 so as to remove restrictions regarding assets held by non-residents and to remove the requirement of keeping payments in special accounts.

Clause 5 seeks to remove restrictions on the import and export of gold, silver, jewellery and precious stones under section 13.

Clause 6 seeks to omit section 15 so as to remove the requirement of non-residents discharging certain specific liability in foreign currency while, on visit to India and also seeks to omit section 17 which relates to gold and silver.

Clause 7 seeks to enact a new provision, namely, section 18A so as to regulate payment for lease, hire or other arrangement relating to goods taken or sent out of India.

Clause 8 seeks to omit certain clauses and amend others in section 19 so as to remove restrictions on the transfer of any security from a register in India to a register outside India. Transfer of shares by a non-resident to another non-resident will no longer be prohibited. It also seeks to include bonds and debentures within the purview of sub-section (5). Power of the Central Government to issue notification for exempting any transfer of shares etc., is being given to the Reserve Bank of India.

Clause 9 seeks to omit section 20 thereby removing restrictions on payments in respect of Government securities issued before independence of India. It also seeks to omit section 21 which contains provisions regarding custody of securities.

Clause 10 seeks to omit the provision from section 22 regarding power of Central Government to issue notification regarding bearer certificates and coupons. The power shall remain with the Reserve Bank.

Clause 11 seeks to omit section 23 which provides for acquisition of foreign securities by the Central Government.

Clause 12 seeks to amend section 25 for empowering the Reserve Bank to give general or special permission in matters of sale, etc., of any immovable property held by a person resident in India, outside India.

Clause 13 seeks to amend section 26 so as to remove restrictions on certain companies in the matter of borrowing funds or raising deposits,

etc. The provision regarding the giving of guarantee by a person resident in India is being retained in section 26.

Clause 14 seeks to omit section 27 which provides for restrictions on persons resident in India associating themselves with or participating in concern outside India.

Clause 15 seeks to amend section 28 so as to remove restrictions from the companies in which the non-resident interest is more than 40%.

Clause 16 seeks to amend section 29 with a view to removing restrictions on companies in which the non-resident interest is more than 40% except where such companies carry on in India any activity related to agriculture or plantation or where such companies acquire any such undertaking or purchase shares of such undertaking.

Clause 17 seeks to amend section 30 for the purpose of removing restrictions on a foreign national taking up any employment in India in a case where such national desires to acquire foreign exchange out of monies received by him in India.

Clause 18 seeks to amend section 31 so as to remove restrictions on acquisition, holding, etc., of immovable property in India by a company in which non-resident interest is more than 40%.

Clause 19 seeks to omit section 32 which provides for regulation for airlines, etc., on booking of passage outside India and restriction on foreign travel.

Clause 20 seeks to amend certain sections of the Act so as to change reference from the Code of Criminal Procedure, 1898 to the Code of Criminal Procedure, 1973.

Clause 21 seeks to amend section 41 so as to reduce the power of the officers of Enforcement from one year to six months for keeping documents, etc., in their custody. However, power to extend such period by further six months is being given to the Director of Enforcement.

Clause 22 seeks to amend section 42 so as to provide for the foreign currency being kept in proper custody in a bank in view of the security risk involved in such custody. It also provides for the preparation of inventory and its correctness.

Clause 23 makes a consequential amendment in section 43 on the omission of section 32 from the Act.

Clause 24 seeks to amend section 45 so as to withdraw power of search and arrest from Sub-Inspector of Police and give such power to the Deputy Superintendent of Police.

Clause 25 makes consequential amendment in section 50 due to insertion of new section 18A in the Act for the purposes of providing penalty.

Clause 26 provides for fee which shall be payable by a person preferring an appeal under section 52 to the Appellate Board. The pecuniary jurisdiction of a Member of that Board is being raised from fifty thousand rupees to two lakhs and fifty thousand rupees.

Clause 27 seeks to make consequential amendments regarding the short title and certain sections of the Code of Criminal Procedure in section 53.

Clause 28 also makes consequential amendments in section 56 due to the amendments made in other provisions of the Act.

Clause 29 seeks to enhance punishment in section 58 of the Act.

Clause 30 seeks to make consequential amendments in section 61 by reason of amendment in the Code of Criminal Procedure.

Clause 31 also seeks to make consequential amendments in section 64.

Clause 32 seeks to amend section 66 for making consequential amendment therein.

Clause 33 also seeks to introduce consequential amendments in section 67.

Clause 34 seeks to amend section 71(3) so as to raise the limit from two hundred and fifty rupees to fifteen thousand rupees for the purpose of burden of proof on the person who is found possessing foreign exchange.

Clause 35 also makes consequential amendments in section 73 on account of amendments made in other provisions of the Act.

Clause 36 seeks to insert a new section 73A in the Act so as to empower the Reserve Bank to impose penalty on an authorised dealer who contravenes its direction or fails to file any return as directed by the Reserve Bank.

Clause 37 seeks to make consequential amendments in section 74 due to amendments made in other provisions of the Act.

Clause 38 seeks to empower the Central Government to make rules under section 79 so as to prescribe fee payable by a person preferring appeal to the Appellate Board.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 38 of the Bill empowers the Central Government to prescribe fee, under the rules, payable by a person preferring any appeal to the Appellate Board under sub-section (2) of section 52 of the Foreign Exchange Regulation Act, 1973.

2. The matter with respect to which rules may be made under the aforesaid provision is a matter of procedure and detail. The delegation of legislative power contained in such provision is, therefore, of a normal character.

C. K. JAIN,
Secretary-General.

